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2019 IL App (3d) 160636-U

Order filed June 26, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0636
WILLIE WELLS,)	Circuit No. 05-CF-114
Defendant-Appellant.)	Honorable Albert L. Purham, Jr., Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court failed to consider juvenile defendant's youth and its attendant characteristics before imposing a discretionary, 61-year sentence. Pursuant to *People v. Buffer*, we remand for a new sentencing hearing.

¶ 2 Defendant, Willie Wells, appeals from the trial court's denial of his motion for leave to file a successive postconviction petition. In his petition, defendant argued, in relevant part, that pursuant to evolving case law involving juvenile offenders, his 61-year *de facto* life sentence is unconstitutional under the eighth amendment and Illinois's proportionate penalties clause. The

court denied defendant's petition, finding that he failed to satisfy the cause and prejudice test required to obtain leave. Defendant appeals, asserting that the trial court erred in denial of his motion for leave. We vacate defendant's sentence and remand for resentencing.

¶ 3 I. FACTS

¶ 4 In 2005, defendant and three other men were charged with aggravated criminal sexual assault (720 ILCS 5/12-14(a) (West 2004)), aggravated vehicular hijacking (*id.* § 18-4(a)(3)), and kidnapping (*id.* § 10(a)(1)). All Class X felonies. The charges stemmed from an incident in which the group hijacked a vehicle at gunpoint, kidnapped the driver of the vehicle, and sexually assaulted her numerous times. Following an August 2007 trial, a jury found defendant guilty of all charges.

¶ 5 At trial, the victim testified as follows. Shortly after midnight on February 2, 2005, she was driving home when another car approached her from behind. The car cut in front of her and slammed on its brakes. Once her vehicle came to a stop, defendant jumped out of the rear passenger seat of the other car, displaying a handgun, and demanded that she move to the backseat of her vehicle. Defendant and a second male joined the victim in the backseat. The victim was then forced to perform oral sex on defendant. She was told that if she did not comply, she would be shot. The men then took the victim behind some houses where the victim was again forced to perform oral sex on defendant, while the individual who was driving the car raped her vaginally. Defendant and his accomplice then rendezvoused with a group of men at a house with the victim still captive. The victim was forced from the car at gunpoint, led into the house, and taken to an upstairs bedroom. She was, again, told that if she did not cooperate, she would, among other things, be shot. The victim was then forced to perform oral sex on several other men huddled around her. Some of the men also raped her vaginally. Eventually, after hours of

sexual assault, the men drove the victim home and warned her that they knew where she lived and would shoot into her house if the police were contacted.

¶ 6 In anticipation of sentencing, the probation department prepared a presentence investigation report (PSI). The PSI revealed that defendant had a lengthy juvenile criminal history that began with a retail theft adjudication in 2000 when he was 12 years old, followed by a second retail theft adjudication in 2001. In June 2002, defendant was adjudicated delinquent for felony unlawful possession of a stolen vehicle. While awaiting sentencing for this charge, he committed a second felony unlawful possession of a stolen vehicle in July 2002. While serving a 30-day detention for the June 2002 adjudication, defendant received 10 incident reports for behaviors ranging from acting out to threatening other residents, cursing and threatening employees, and fighting. While on probation for the July 2002 offense, defendant violated the terms of probation by committing a third unlawful possession of a stolen vehicle in March 2003. He was released to his stepmother and ordered to home confinement but in May 2003, the State filed a complaint for adjudication of criminal contempt alleging seven separate home detention order violations. Additionally, in May 2003, a petition to violate his probation was filed alleging that he committed the offense of battery in May 2003 by striking two females in the face with his fist. In June 2003, defendant was committed to the Department of Juvenile Corrections until his parole release in October 2004. He committed the instant offense while on parole.

¶ 7 The PSI also indicated that while committed to the Department of Juvenile Corrections in 2002, defendant underwent a psychological evaluation that found he “wa[s] functioning in the low average range of intelligence” and “was listed as immature with poor impulse control.” The evaluator also noted defendant’s “family had a history of dysfunction” but that defendant “kn[ew] right from wrong.” It detailed defendant’s family history, including that his mother’s

parental rights were terminated when defendant was a newborn due to drugs in her system; he reported his stepmother physically abused him once in 2000 when she struck him with a belt. The report also indicated that from the age of six to eight, an older cousin forced defendant to perform oral sex on him “at least 30 times.” Defendant was close with his uncle who is serving a life sentence for first degree murder. His father died one week after his arrest for the instant offense. Finally, the report indicated that defendant suffered with depression and suicidal thoughts while incarcerated in 2003.

¶ 8 At the sentencing hearing, the State presented one witness, the victim, to testify. She testified as to her experiences following the incident and how it detrimentally impacted her life. In particular, she suffered ongoing anxiety and fear. The incident negatively impacted her personal relationships. Defendant entered no formal evidence in mitigation.

¶ 9 The State then reiterated the brutal facts of the offense. It asserted that based on his criminal history, “the only time the defendant can remain law-abiding, to not act out, not be disruptive, not be violent is when he is locked in a facility. And even that, in the detention center, he had problems handling that.” The State noted that defendant “has proved time and time again in his young life that *** nothing you do to him—no adjudications, no sentences, no probations, no counseling—changes his behavior. He goes right out and does it again and again and again and again, and it escalated to an absolutely violent, horrific and evil act on February 2nd of 2005.” The State continued, “that the chance of rehabilitating the defendant is probably not very strong, because he wasn’t able to take advantage of the services offered through the juvenile court system, which has far more services to offer than he will receive in the adult correctional system.” In the State’s opinion, “defendant needs to be locked up so that he never has another opportunity to commit any crime against any person, any victim, however small or however

large, as [the victim] suffered. He cannot be released from a facility. He has shown nothing but contempt for the system, contempt for services offered, and certainly treating another human being as if they're nothing more than trash." The State concluded, "[T]his was a brutal and heinous crime. This is a case that requires severe, severe punishment. And as I suggested, the only way to protect society from this man is to make sure that he doesn't breathe a free breath of air outside of the system, and if he does, that he be a very old man when he does."

¶ 10 In arguing for a sentence in the range of 20 to 25 years, defense counsel focused on what it deemed to be defendant's "life-long virtual involvement as a victim, a victimization [*sic*] of various people within the household, including repeated physical abuse and sexual abuse over a protracted period of time." Counsel believed that the sexual assaults committed by defendant in this case were "absolute aberrations" as nothing in defendant's background suggested he would commit such acts.

¶ 11 The trial court then announced that it "has considered the evidence heard at trial, the detailed Presentence Investigation Report [PSI] and all the attachments ***, the evidence offered in aggravation, mitigation [and] counsels' statements on alternatives." In particular, in aggravation, the court noted defendant's prior criminal history outlined in the PSI and that "it's not just one prior involvement but multiple involvements, multiple violations of a supervisory status, a sentence to the Department of Corrections that didn't correct anything." The court also noted that defendant committed the instant offense, which the jury found to be "exceptionally brutal or heinous, indicative of wanton cruelty" while on supervised release from the Department of Juvenile Corrections. Finally, the court pointed out that the offense is a Class X felony that requires a mandatory 10-year add-on because defendant used a firearm. In mitigation, the court noted that defendant was 16 years old at the time of the offense. It acknowledged that he

appeared to have been victimized, physically and sexually, from a young age and that because of “that particular dysfunctional background, *** he went into the juvenile delinquency system as noted.” The court also considered defendant’s close relationship with his uncle growing up, an uncle who is serving a life sentence in prison for first degree murder. The court stated that it “considers the potential for rehabilitation” and acknowledged the State’s argument that defendant is unlikely to rehabilitate. Finally, prior to sentencing defendant, the court announced that it “has considered all the formal, informal factors of aggravation and mitigation *** plus the prospect of any rehabilitation.” The court found that based on the above, defendant should be sentenced to a prison term in excess of the minimum. Thereafter, the court sentenced him to 40 years’ imprisonment for aggravated criminal sexual assault, a consecutive 21-year prison sentence for aggravated vehicular hijacking, and a concurrent 6-year prison sentence for kidnapping.

¶ 12 On direct appeal, this court affirmed defendant’s convictions and sentences. *People v. Wells*, No. 3-07-0725 (2009) (unpublished order under Illinois Supreme Court Rule 23).

¶ 13 In July 2009, defendant *pro se* filed a postconviction petition asserting that: (1) the trial court erred by failing to instruct the jury on inconsistent statements by the victim; (2) the State failed to prove him guilty beyond a reasonable doubt; (3) the prosecutor made improper closing arguments; (4) the trial court erred in admitting photographs of condoms recovered by police at the scene; (5) the trial court erred by not properly instructing the jury regarding the photographic exhibits; and (6) his interrogation was improper because the police did not question him until four hours after his arrest. The trial court advanced the petition to the second stage and appointed counsel to represent defendant. In February 2011, defendant *pro se* filed a motion requesting new counsel because his appointed postconviction counsel had not consulted with him or made any

effort to communicate with him regarding his petition. In April 2011, appointed postconviction counsel filed a Rule 651(c) (Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984)) certificate. In November 2011, defendant *pro se* filed a motion for leave to file a supplemental petition to add additional claims of ineffective assistance of counsel. Defendant also alleged that his appointed postconviction counsel made no meaningful effort to amend his petition.

¶ 14 In December 2013, the State filed a motion to dismiss defendant's postconviction petition. Following a hearing, the trial court directed postconviction counsel to file a supplemental Rule 651(c) certificate that considered defendant's new ineffective assistance of counsel claims. Postconviction counsel did so in December 2014. In February 2015, the trial court denied defendant's postconviction petition, finding that the claims were forfeited or lacked merit.

¶ 15 In June 2016, defendant filed a motion for leave to file a successive postconviction petition. He argued, in relevant part, that due to his status as a juvenile at the time of the crimes, his 61-year *de facto* life sentence is unconstitutional under the eighth amendment and Illinois's proportionate penalties clause. Specifically, defendant asserted that he satisfied the (1) cause requirement for a successive postconviction petition by showing a change in the law regarding mandatory *de facto* life sentences for juvenile offenders and (2) prejudice requirement because his 61-year sentence for crimes committed as a 16-year-old was unconstitutional because it is a *de facto* life sentence. In August 2016, the trial court denied defendant's motion for leave finding that "defendant's arguments both could have and should have been raised on direct appeal[] in that they address the length of his sentence and the automatic transfer rule for juveniles." The court further stated:

“In applying the cause and prejudice standard[,] this Court finds [that al]though *Miller v. Alabama*, 132 S. Ct. 2455 (2012) is persuasive[,] it is not on all fours with the defendant’s case in that he did not receive a natural life sentence. Further[,] there is no reason to believe that the sentencing Judge did not consider all appropriate sentencing factors. In short, this Court does not find that the law has changed as applied to him. Further[,] the Court finds the automatic transfer rule argument if frivolous and without merit.”

¶ 16 Defendant appeals.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues that the trial court erred in denying his petition for leave to file a successive postconviction petition.

¶ 19 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(a) (West 2014)) provides a method for incarcerated individuals to challenge the proceedings that resulted in their conviction by alleging a substantial denial of their federal and/or state constitutional rights. “A proceeding under the Act is a collateral attack on the judgment of conviction.” *People v. Wrice*, 2012 IL 111860, ¶ 47. Accordingly, “a post-conviction proceeding allows inquiry only into constitutional issues that were not, and could not have been, adjudicated on direct appeal.” *People v. Johnson*, 206 Ill. 2d 348, 356 (2002). “Thus, issues that were raised and decided on direct appeal are barred from consideration by the doctrine of *res judicata*; issues that could have been raised, but were not, are considered waived.” *Id.*

¶ 20 Further, the Act contemplates the filing of only one postconviction petition without leave of court. 725 ILCS 5/122-1(f) (West 2014). Successive postconviction petitions impede the

finality of criminal litigation, and the statutory bar will be relaxed only when fundamental fairness so requires. *People v. Holman*, 2017 IL 120655, ¶ 25. We review *de novo* the trial court’s denial of a petitioner’s leave to file a successive postconviction petition. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 38.

¶ 21 While defendant’s appeal was pending, our supreme court in *People v. Buffer*, 2019 IL 122327, made a further clarification to its eighth amendment jurisprudence. In *Buffer*, the court reviewed the denial of the defendant’s postconviction petition. *Id.* ¶ 12. The defendant in that case was sentenced to 50 years’ incarceration for a crime he committed when he was 16 years old. *Id.* ¶ 1. The defendant argued his sentence violated the eighth amendment because it was a *de facto* life sentence. *Id.* ¶ 7. The court clarified that in order to “prevail on a claim based on *Miller* and its progeny, a defendant sentenced for an offense committed while a juvenile must show that (1) the defendant was subject to a life sentence, mandatory or discretionary, natural or *de facto*, and (2) the sentencing court failed to consider youth and its attendant characteristics in imposing the sentence.” *Id.* ¶ 27.

¶ 22 The court then chose to use the mandatory minimum decided upon by the legislature as the demarcation for what is to be considered a *de facto* life sentence for juveniles. See *id.* ¶ 40. Looking to subsection (c) of a recently revised juvenile sentencing statute, the court reasoned that “the General Assembly has determined that the specified first degree murders that would justify natural life imprisonment for adult offenders would warrant a mandatory minimum sentence of 40 years for juvenile offenders.” *Id.* ¶ 39; see also 730 ILCS 5/5-4.5-105 (c) (West 2018). The special concurrence took issue with what it characterized as the majority eschewing responsibility by deferring to the legislature’s mandatory minimum. See *id.* ¶ 63 (Burke, J., specially concurring) (“Not only is the legislature not the ‘entity best suited’ to determine

whether its own statutory scheme is unconstitutional, it is the wrong entity to make that determination.”). Instead, Justice Burke would have based the calculation of what constitutes a *de facto* life sentence on statistical grounds. See *id.* ¶¶ 65-67 (any sentence upon a minor that would result in the individual not being released from prison until 55 years of age or older is a *de facto* life sentence). Regardless, *Buffer* makes it clear that in Illinois any juvenile sentenced to incarceration in excess of 40 years has received a *de facto* life sentence. See *id.* ¶ 40.

¶ 23 Thus, because defendant’s sentence of 61 years is a *de facto* life sentence, the trial court needed to consider his youth and its attendant circumstances before imposing the discretionary sentences. “A court revisiting a discretionary sentence of life without parole must look at the cold record to determine if the trial court considered such evidence at the defendant’s original sentencing hearing.” *Holman*, 2017 IL 120655, ¶ 47.

¶ 24 Our supreme court has found that a juvenile defendant may be sentenced to life imprisonment, or a *de facto* life term, “but only if the trial court determines that the defendant’s conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation.” *Id.* ¶ 46. It noted that “[t]he [trial] court may make that decision only after considering the defendant’s youth and its attendant characteristics.” *Id.* The court then delineated a nonexclusive list of factors that the trial court must consider for the sentence to be consistent with the eighth amendment, including:

“(1) the juvenile defendant’s chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant’s family and home environment; (3) the juvenile defendant’s degree of participation in the [crime] and any evidence of familial or peer pressures that may have

affected him; (4) the juvenile defendant's incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile defendant's prospects for rehabilitation." *Id.* ¶ 47; see also *Buffer*, 2019 IL 122327, ¶ 19.

¶ 25 We now turn to the record to determine whether the trial court considered defendant's youth and its attendant characteristics when it imposed the sentence upon defendant nearly five years before the *Miller* decision.

¶ 26 In particular, the trial court acknowledged that defendant "was 16 years eight months" old at the time of the crimes. The court also considered defendant's home environment and his degree of participation in the crimes. Finally, the court considered defendant's prospects for rehabilitation. Based on the brutality of the instant offense and defendant's prior criminal history evidencing the unlikelihood of rehabilitation, the court determined a prison sentence in excess of the minimum to be appropriate.

¶ 27 Following *Buffer*, our review of the record shows that the trial court failed to consider defendant's youth and its attendant characteristics in imposing the sentence. The State argues that the sentencing court was aware of defendant's age and that this was sufficient. However, this was also true in *Buffer* and was not dispositive. Mere awareness of the defendant's age, consideration of family circumstances, and the ability to be rehabilitated is insufficient to show the court specifically considered defendant's youth and its attendant characteristics.

¶ 28 As in *Buffer*, the appropriate remedy for defendant in this case is a new sentencing hearing. See *Buffer*, 2019 IL 122327, ¶¶ 44-47 ("in the interests of judicial economy, *** the proper remedy is to vacate defendant's sentence and to remand for a new sentencing hearing."). On remand, defendant shall be entitled to be sentenced under the scheme promulgated by section

5-4.5-105 of the Unified Code of Corrections (Code). 730 ILCS 5/5-4.5-105 (West 2018); *Buffer*, 2019 IL 122327, ¶ 47.

¶ 29 To be clear, we do not hold that the trial court may not impose a *de facto* life sentence upon remand. However, it may do so only after finding such a sentence appropriate after considering all relevant factors and specifically considering defendant’s youth and its attendant characteristics.

¶ 30 III. CONCLUSION

¶ 31 For the foregoing reasons, the sentence of the circuit court of Peoria County is vacated, and the cause is remanded to the circuit court for resentencing in accordance with section 5-4.5-105 of the Code.

¶ 32 Sentence vacated; cause remanded.